

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID REED,

Defendant.

Case No. 93-cr-40050-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on defendant David Reed's motion for leave to proceed *in forma pauperis* (Doc. 180) in his appeal of the Court's April 21, 2010, order dismissing for lack of jurisdiction Reed's *pro se* motion for a reduction of his criminal sentence pursuant to 18 U.S.C. § 3582(c)(2) and United States Sentencing Guidelines Manual § 1B1.10 (Doc. 166) and granting his counsel's motion for leave to withdraw (Doc. 172).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Reed was sentenced based on an offense level determined by his career offender status, not his relevant conduct. His guideline range was not lowered by a subsequent amendment to the guidelines. In light of the Seventh Circuit's ruling in *United States v. Forman*, 553 F.3d 585, 589 (7th Cir.), *cert. denied*, 129 S. Ct. 2817 (2009), any argument that this Court has jurisdiction

to decide Reed's motion is frivolous. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 180). The Court **DIRECTS** the Clerk of Court to send a copy of this order to the Court of Appeals for the Seventh Circuit.

IT IS SO ORDERED.

DATED: May 14, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE